IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.127 OF 2004
IN
WRIT PETITION NO.3471 OF 2004

M/s.Elegant Pharmaceuticals Ltd. Appellant
(Org.Petitioner)

versus

The Union of India and others Respondent
(Org.Respondents)

P.C.Kansara, adv. for appellant.

M.S.Karnik, adv. for R-2.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 24th November 2004

PC :

1. This Letters Patent Appeal is directed against an order passed by the learned Single Judge in Writ Petition No.3417 of 2004. Learned Single Judge has dismissed the above writ petition instituted by the appellant. That petition under Article 226 of Constitution of India challenged orders dated 20th August 2001 and 29th March 2004. The factory premises have been sealed by the respondents for non payment of Provident Fund dues determined by the aforesaid

orders.

2. Learned Single Judge was of the view that in the light of the decision of this Court in the case of M/s.Ralliwoolf Limited Vs. Regional Provident Fund Commissioner, no case for interference was made out and the petition deserves to be dismissed.

3. This Letters Patent Appeal was placed before a Division Bench of this Court consisting of C.K.Thakkar, C.J. (as His Lordship then was) and S.A.Bobde, J. on 6th May 2004. This Court after hearing learned counsel appearing for the appellant and respondents passed following order in Civil Application No.185 of 2004 :-

> "In the circumstances, therefore, it would be appropriate if the interim relief against orders passed by the Assistant Provident Fund Commissioner, as also consequential orders, are stayed, on condition that the applicant deposits in this Court an amount of Rs.5,00,000/- (Rs.Five Lakhs only). As soon as the said amount is deposited, the stay will operate."

4. It appears that when this Letters Patent Appeal was placed before a Division Bench to which one of us (A.P.Shah, J.) was a party, on 13th September 2004 the appellant was directed to deposit in this Court admitted balance of Rs.1.76 lakhs. We are informed by Mr.Kansara and Mr.Karnik, advocates for appellant and respondents, that this amount is deposited. Mr.Kansara contended that the authorities completely lost sight of the fact that the appellant is a Sick Industrial Company and proceedings are pending before the BIFR.. Although, Provident Fund dues have to be discharged independent of such proceedings, he submits that on account of severe financial constraints and lack of funds, it will not be possible to pay the amount under the impugned orders. He submits that it will not be possible to pay or deposit anything over and above the sum which is already paid/deposited by the appellant. He invites our attention to the representation dated 8th February 2002 addressed by the appellant to the Provident Fund authorities. He also contends that the total dues is Rs.3,27,329/-. However, authorities in the order passed u/s.7A of Employees Provident Fund and Miscellaneous Provisions Act, 1952 determined the liability of Rs.8,63,016/-. He submits that if

the actual dues is only Rs.3,27,329/- as per the records, then it is not possible to sustain the impugned order. That apart, he submits that the impugned orders are passed ex-parte. The appellants were not given opportunity of hearing.

5. On the other hand, Mr.Karnik, learned counsel appearing for respondents invites our attention to the affidavit filed to oppose the writ petition and more particularly to the averments in para no.5 thereof. He submits that the Provident Fund dues of workers have to be paid and it will not be permissible in law to take shelter of proceedings before BIFR.. He submits that appellant is a chronic defaulter and despite coercive measures is not discharging the dues.

6. In our view, the legal position is well settled. Merely because proceedings u/s.22 of SICAR are pending, the authorities exercising powers under Employees Provident Fund and Miscellaneous Provisions Act, 1952 are not estopped from recovering Provident Fund dues from defaulting employers. They are entitled to assess and recover the dues in accordance with law. Therefore, there is no substance in the grievance of Mr.Kansara that the recovery be deferred or stayed as the appellant is a Sick

Industrial Company.

7. However, after perusing the records, we find that the learned Single Judge has not taken cognizance of the grievance of appellant that no opportunity was given to it before the impugned orders were passed by the authorities. A specific ground in that behalf is taken in the writ petition. It is contended by the appellant in the writ petition that action of attachment and sealing is based upon an ex-parte order. The actions are, therefore, in gross violation of principles of natural justice.

8. It is not disputed that the order is ex-parte. However, it is contended by Mr.Karnik that opportunity was given to the appellant but they failed to avail of the same. Be that as it may, in our view, interest of justice would be served if we grant final opportunity to the appellant to contest the proceedings as a last chance. Moreso, since amount of Rs.1.76 lakh has been deposited. Although, Mr.Karnik insisted that the entire amount of Rs.5.00 lakh, as directed by the Division Bench also should be deposited, we find that it would not be fair and proper to impose such a condition. Moreso, when the impugned orders are ex-parte. At the same

time, the liability being Provident Fund dues of the workers, the deposit of Rs.1.76 lakh will not be sufficient. Therefore, we direct the appellant to deposit a further sum of Rs.50,000/- (Rs.Fifty thousand only) with the Provident Fund authorities within a period of four weeks from today. On such deposit being made, order dated 20th August 2001 passed u/s 7A of the Act would stand quashed and set aside with liberty to the respondents to pass fresh orders in exercise of it's powers under this provision after giving opportunity of hearing to the appellant. However, it is clarified that we are not issuing any directions to unseal the factory premises nor are we directing raising of attachment in respect of same. Thus, the attachment to continue.

9. All that is being done is to modify the impugned order of learned Single Judge with the directions issued as above. Needless to state that if the amount of Rs.50,000/- (Rs.Fifty thousand only) is not deposited within the time stipulated above, the authorities would be free to proceed in accordance with law. However, upon deposit being made the authorities to pass fresh orders after hearing the appellant within a period of six weeks from the date of deposit. Liberty to the Appellant to take out appropriate

proceedings in case the orders are adverse to them. All contentions on merits are open.

10. Letters Patent as well as writ petition stand disposed of in the above terms.

11. No order as to costs. Parties to act on authenticated copy of this order.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)

mst